



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

January 23, 2004

Frank Michny  
Regional Environmental Officer  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

**Subject:** 2004 Renewal of Interim Water Service Contracts Supplemental Draft  
Environmental Assessment (SEA)

Dear Mr. Michny:

The Environmental Protection Agency (EPA) has reviewed the Draft Supplemental Environmental Assessment for the 2004 Renewal of Interim Water Service Contracts through February 29, 2006 - Central Valley Project, California. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

EPA provided comments on the 1994 draft guidelines for interim renewal of long-term CVP contracts and on the 1994 EA for interim renewal of 67 CVP water service contracts, and the 2002 EA for interim renewal of 42 CVP water service contracts. In that many of our earlier comments are still relevant to the proposed contracts and current SEA, these letters are hereby incorporated by reference. A copy of our 2002 letter is attached.

EPA continues to have the following concerns:

- the current overcommitment of water resources and imbalance between water supply and demand;
- a reevaluation of the alternatives eliminated from further analysis;
- and the environmental consequences of the proposed action as they relate to indirect and cumulative impacts.

The current management of the contract water supplies constitutes an irretrievable commitment of resources which should be fully evaluated pursuant to NEPA. The present SEA is the fifth "roll-over" since 1994. Section 3404(c) of Central Valley Project Interim Agreement (CVPIA) states that the interim period may not exceed three years and that successive interim periods may not exceed two years prior to execution of new long-term contracts. Therefore, EPA urges Reclamation to pursue execution of long-term contracts based on a sound NEPA process, supporting an environmentally-responsive contract design.

EPA acknowledges the significant efforts made by Reclamation staff over the past several years in developing an approach to CVP contracts that is fair to the districts involved and implements the reforms envisioned by the CVPIA. We continue to offer our support on working through the issues raised in our comments or on other issues raised during the comment period. If you have questions, please contact Summer Allen, the lead reviewer for this project, at 415-972-3847.

Sincerely,

Lisa B. Hanf, Manager  
Federal Activities Office

Main ID# 002218

Enclosures:

EPA Comments on 2002 Interim Renewal EA

cc: Donna Tegelman, BOR, MP-400  
Gary Stern, National Marine Fisheries Service, Santa Rosa  
Michael Aceituno, National Marine Fisheries Service, Sacramento  
US Army Corps of Engineers, San Francisco & Sacramento  
Pat Port, Department of the Interior  
Wayne White and David Wright, US Fish and Wildlife Service  
Jim White, Department of Fish and Game  
Victoria Whitney, State Water Resources Control Board  
Mary Nichols, California Resources Agency  
Patrick Wright, CALFED



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January 4, 2002

Frank Michny  
Regional Environmental Officer  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

Dear Mr. Michny:

The Environmental Protection Agency (EPA) has reviewed the **Draft Supplemental Environmental Assessment for the 2002 Renewal of Interim Water Service Contracts through February 29, 2004 - Central Valley Project, California**. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The Bureau of Reclamation (Bureau) proposes to execute 42 interim renewal water service contracts for up to two years between March 1, 2002 and February 29, 2004. Execution of interim contracts is needed to continue delivery of Central Valley Project (CVP) water until long-term contracts can be executed.

The renewal of interim water service contracts was first evaluated in a 1994 environmental assessment (EA) with supplemental EAs (SEAs) issued in 1998, 2000, and 2001 for subsequent interim renewals (i.e., "roll-overs"). The current SEA is tiered to these previous EAs and relies on the evaluation of environmental consequences provided in the 2000 and 2001 SEAs. The proposed interim contracts include the same terms as those executed in 1994, and renewed in 1998, 2000, and 2001. If long-term contracts are not executed by March 1, 2003, a one-year extension of these interim contracts (March 1, 2003 through February 29, 2004) may be executed. Prior to a second year extension, the Bureau will determine if additional NEPA analysis is necessary.

As you know, EPA has had a long institutional interest in the Bureau's renewal of interim and long-term contracts. We provided comments on the 1994 draft guidelines for interim renewal of long-term CVP contracts and on the 1994 EA for interim renewal of 67 CVP water service contracts. In that many of our earlier comments are still relevant to the proposed contracts and current SEA, these letters are hereby incorporated by reference. Copies are attached.

EPA continues to be concerned that the "roll-overs" of the interim contracts have compromised the Bureau's NEPA process for the following reasons:

- The present SEA is the fourth "roll-over" since 1994. In effect, many of these interim renewal contracts have been continued for 7 years. The current renewal would extend these interim renewal contracts to a period of 10 years. Therefore, the premise that the contracts are of a limited duration with minor environmental impacts, is no longer valid.
- The status quo perpetuates and aggravates environmental degradation and constitutes an irretrievable commitment of resources which should be fully evaluated pursuant to NEPA. We note that the Central Valley Project Improvement Act Programmatic Environmental Impact Statement did not evaluate water quality impacts at any level, nor did it evaluate other environmental impacts at the district level. We continue to believe there is a compelling need for detailed evaluation of long-term and cumulative impacts of district-level water quality, groundwater, and water supply reliability effects of the continuing action.

We urge the Bureau to stop continual "roll-overs" of the interim contracts and to pursue execution of long-term contracts based on a sound NEPA process which informs environmentally responsive contract design. To do so would be in the best interests of California, the public, and sound water supply management. We believe an adequate NEPA process for district-level contracts should include evaluation of the long-term and cumulative impacts of the status quo and continual roll-over of interim renewal contracts. We also urge the Bureau to create strong incentives to move contractors from interim renewal contracts to long-term contracts. We consider these NEPA compliance issues to be significant and we will work with you to resolve our concerns to avoid elevation of these issues.

EPA wishes to acknowledge the significant efforts made by Bureau staff over the past several years in developing an approach to CVP contracts that is fair to the districts involved and implements the reforms envisioned by the CVPIA. Our detailed comments (attached) discuss a number of issues which we believe should be considered in the environmental documentation for interim renewal of water service contracts. We stand ready to offer our support on working through the issues raised in our comments or on other issues raised during the comment period. If you have any questions about these comments, please call Lisa Hanf at (415) 972-3854 or Laura Fujii at (415) 972-3852.

Yours truly,

Joshua Baylson,  
Acting Deputy Director  
Cross Media Division

Attachments: Detailed comments (3 pages)

EPA Comments on 1994 Draft Guidelines for Interim Renewal of CVP  
Contracts

EPA Comments on 1994 Interim Renewal EA

MI002218

Filename: interimcvpcontracts.wpd

cc: Donna Tegelman, BOR, MP-400  
Gary Stern, National Marine Fisheries Service, Santa Rosa  
Michael Aceituno, National Marine Fisheries Service, Sacramento  
US Army Corps of Engineers, San Francisco & Sacramento  
Pat Port, Department of the Interior  
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## **DETAILED COMMENTS**

### **Impact of No Action (Status Quo)**

The 1994 Environmental Assessment (EA) and subsequent Supplemental Environmental Assessments (SEAs) measure impacts of the proposed action relative to the status quo scenario, or "no action." However, the Bureau has failed to place the status quo in the context of historical biological resource losses or actual on-the-ground environmental conditions associated with CVP water delivery (e.g., reduced flows in the San Joaquin River). Thus, the conclusion that there are no significant impacts since the proposed action represents a continuation of the existing action is flawed.

#### *Recommendation:*

We urge the Bureau to evaluate potential impacts of the continuing action in comparison to existing environmental conditions and trends. As we have stated before, "no action" does not equate with "no impact." Therefore, the Bureau should determine whether the continuation of the action will contribute to a declining, stable, or improving environmental condition.

### **Environmental Consequences**

An underlying assumption of the SEA appears to be that there are no changes in land use, canal maintenance procedures, cropping patterns, or other agricultural and irrigation practices because the contracts are of a limited duration, represent a continuation of existing conditions, and will not provide for additional water supplies that could lead to shifts in agricultural practices or land use (draft Finding Of No Significant Impacts (FONSI), pg. 3). However, changes in existing conditions have occurred which could affect agricultural practices. These changes should be taken into account.

#### *Recommendations:*

We recommend the Bureau reevaluate the assumption of no change in agricultural or irrigation practices that occur with market and other economic shifts, regulatory reform, and environmental dynamics. In examining the incremental impacts of roll-overs, the Bureau should consider the cumulative impacts from changed agricultural conditions. Conditions to consider include changes in herbicide use for aquatic plant control in irrigation canals, the increased focus on invasive species control, new air quality standards (e.g., PM2.5), new water quality actions (e.g., California Regional Water Quality Control Board waste discharge requirements), and projected growth and development within the Central Valley.

The 2000 SEA (pg. 3-4) states that the Bureau has undertaken a number of commitments to monitor and address any impacts from the previous interim

contracts. We urge the Bureau to include the most recent monitoring results in the final environmental documentation.

## **Alternatives**

1. It appears that Alternative 2, as presented in the 2000 SEA, is no longer being evaluated as an alternative. Therefore, only Alternative 1, the No Action alternative, is considered in the 2001 and 2002 SEAs (2002 SEA, pg. 2-2).

### *Recommendation:*

Given the fact that many of the interim contracts have been in place for 7 years and may be continued into the indefinite future, we strongly believe the Bureau should consider evaluation of other reasonable alternatives as required by NEPA [40 CFR Section 1502.14(a) and (c)].

2. As presented in the 2000 SEA, Alternative 2 would specify water quantities using two water supply categories. The first, more reliable water category, would be the quantity of water that would be reasonably likely to be available during a year for delivery and would be the "contract total." The second category of water would be any additional water that may be delivered to contractors in excess of the first category of water.

EPA has frequently expressed our concern that the contract quantities included in the current contracts do not accurately reflect the delivery capability of the CVP, especially after regulatory actions under the Clean Water Act, the CVPIA and the Endangered Species Act are considered. In many years -- and for some districts, in most years -- the CVP is unable to deliver the entire amount of water called for in the current contracts. EPA is concerned that this "over commitment" of CVP supplies has the potential to adversely affect the Bureau's ability to effectively assist in addressing California water and environmental needs.

### *Recommendation:*

We urge the Bureau to consider including the dual water category approach in their interim contract renewals, especially since these contracts may continue into the indefinite future. We suggest that the Bureau develop a consistent process for determining, on a contract by contract basis, the proper allocations of "base" and "supplemental" quantities. We believe the "base" amount should reflect recent historical realities but also factor in the anticipated future limitations on CVP supplies noted and evaluated in the CVPIA Programmatic EIS.

3. Alternative 2 also included the concept of tiered water pricing for the first category of water (contract total) where the first 80 percent of the contract total would be priced at the contract rate. Subsequent 10 percent increments would be priced at higher rates. The second

category of water would be priced at the full cost rate.

*Recommendation:*

EPA has often expressed our support for the concept of tiered pricing as a mechanism for encouraging economically efficient water uses in both the agricultural and urban sectors. EPA appreciates that implementing tiered pricing in the real world is difficult, given the vastly different circumstances of irrigation districts and the various approaches to managing water supplies in diverse hydrologies. Nevertheless, we urge the Bureau to reconsider including tiered water pricing in interim renewal contracts and to develop carefully tailored, district or unit level approaches to tiered pricing.

**General Comments**

1. We recommend the Bureau clearly state in the environmental documentation the most realistic schedule for execution of long-term contract renewals. We ask that the Bureau confirm that interim contract renewals will not be continued into the indefinite future. We also strongly urge the Bureau to include language in each interim contract stating a specific schedule and date for finalizing and executing the long-term contract.
2. We are concerned that NEPA review of the major environmental issues involved in water delivery under these contracts is being carried out in an increasingly fragmented way through different NEPA processes. We urge the Bureau to more explicitly articulate (a) how the various long-term contract EISs (e.g., American River Unit) will tier from the CVPIA PEIS, (b) how these interim contract SEAs will tier from the CVPIA PEIS (now that there is a final Record Of Decision on the PEIS), and (c) how the many local efforts, such as the San Luis Drain EIS and the Westside Integrated Resource Plan (WIRP), will tier from the CVPIA PEIS and relate to the various contract renewal evaluations.
3. The final environmental documentation should include updated information on the status of current water transfers and assignments; implementation of CVPIA requirements of Section 3405, as already incorporated into the interim contract provisions (e.g., installation of water measurement devices, conservation plans, meeting water quality standards, payment provisions); US Fish and Wildlife and National Marine Fisheries Service concurrence letters on meeting Endangered Species Act requirements; and status of Interim Contracts Renewal Biological Opinion commitments.